

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4150 of 1999

AND

SPECIAL CIVIL APPLICATION NO.4478 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

THAKOR SUMIT S

Versus

GUJARAT UNIVERSITY

Appearance:

MR AY KOGJE and Mr.V.S.Mehta for Petitioners
MR MANGESH R MENGDEY for Respondent No. 1 in
Special Civil Application No.4150/99 and for
respondent No.2 in Special Civil Application
No.4478/99.

MR KS JHAVERI for Respondent No. 2 in Special Civil
Application No.4150/99 and for respondent No.1 in
Special Civil Application No.4478/99.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/08/1999

COMMON ORAL JUDGEMENT

1. Both these petitions are based on almost identical facts and involve common questions and,

therefore, I propose to decide these two petitions by this common judgment and order.

2. Both the petitioners were students of 2nd Year B.Sc. studying in K.K.Shah Jarodwala Maninagar Science College, which is a college affiliated to Gujarat University. The examination of 2nd year B.Sc. is not a University examination but a local examination held at College level. Both the petitioners had appeared in the 2nd year B.Sc. examination held in March 1999. The petitioner in Special Civil Application No.4150/99 has submitted in para 4 that he actually appeared in 2nd year B.Sc. examination, which was conducted in March 1998 as a regular student, but he could not clear the subjects of Chemistry and English and then it has been submitted that the petitioner was required to give examination for all the subjects of 2nd year B.Sc. course except in Chemistry and Botany practical. He appeared in the 2nd year B.Sc. examination held from 18.3.99 to 30.3.99 with seat No.296. Apparently there is self contradiction in these averments made by the petitioner in para 4. The factual position, as stated by the learned counsel at the time of arguments under instructions from his client, is that he had appeared in all the theory papers and did not appear in Chemistry practical and Botany practical. The case of this petitioner namely, Thakor Sumit S. as stated in para 5 of the petition, is that the result of the said examination was displayed on the Notice Board on 7.5.99 and he was declared to be successful and that his name appeared in the list of successful students in the category of students, who had obtained more than 500 marks in the said examination and thus he was declared successful in this examination of March 1999. It is also the case of the petitioner Thakor Sumit S. that the petitioner had been issued a marksheet on 24.5.99 but there was a mistake in the said marksheet, which came to the notice of the petitioner inasmuch as the petitioner was shown to have obtained "A.T.K.T." and whereas the petitioner had been declared successful in the said Examination, there was no question of "A.T.K.T." and, therefore, to rectify this mistake the petitioner immediately approached the officer of the respondent No.2 i.e. concerned College, who took the marksheet from the petitioner and the petitioner was informed that said marksheet will be rectified and the petitioner was called after 2 days to collect the rectified marksheet. This petitioner also goes on to state that when he approached the respondent No.2 to collect the rectified marksheet after 2 days, the petitioner was informed that since the examination was going on in full swing, the officers did not get time enough to verify the marksheet and to issue

new marksheet to the petitioner. While the petitioner was waiting for the rectified marksheet, to his shock and surprise he received an order dt.4.6.99 by Registered Post A.D. from the College declaring that the result of the petitioner alongwith two other students, who had appeared in 2nd Year B.Sc. examination, has been cancelled and the petitioner is declared to have failed in the 2nd year B.Sc.examination. The ground on which the examination has been cancelled vide order dt.4.6.99 is that the petitioner and two other students have adopted unfair means. It is submitted that the petitioner alongwith his father approached the College authorities and they were given a curt reply that whatever has been done has been done properly and now there was no chance for change even if the petitioner approaches the Registrar or the Chancellor of the University.

3. The petitioner in Special Civil Application No.4478/99 has come with the case that he had appeared and given examination of all theory papers and one examination in practical for 2nd year of B.Sc. This petitioner, namely, Brahmhatt Viral Arvindhbai, claims that in the result of his 2nd year B.Sc. examination, which was declared and as was affixed on the Notice Board of the College on 7.5.99, he was given 'A.T.K.T." as he was yet to pass the practical examination of 2nd year B.Sc. He goes on to say that after three-four days the computerised result of the 2nd year B.Sc.Examination, which was affixed on the notice board, was taken away and when the petitioner went to get the admission in the 3rd year of B.Sc. the respondent College refused to give admission to him without assigning any reasons. He then received the Registered Post A.D.letter from the college to the effect that marks given to the petitioner in the annual examination for the 2nd year B.Sc. were cancelled and the petitioner was declared fail since he was involved in mal practices. The grievance has been raised that his examination has been cancelled without any inquiry and without giving him any opportunity to explain the case against him.

4. In one of these two petitions i.e. Special Civil Application No.4150/99 filed on 14.6.99, Rule was issued on 22.6.99 alongwith the notice as to interim relief returnable on 28.6.99 and in the other petition i.e. Special Civil Application No.4478/99, which was filed in this court on 23.6.99, notice was issued to the respondents returnable on 12.7.99. In response to the rule and the notice, as issued above, reply dt.5.7.99 was filed in Special Civil Application No.4150/99 to which

the petitioner has filed rejoinder dt.13.7.99. In the other petition i.e. Special Civil Application No.4478/99 the reply dt.11.7.99 has been filed on behalf of the College i.e. respondent No.1 to which a rejoinder dt.22.7.99 has been filed. The respondent - College in the reply has traversed the case of both these petitioners and an objection had also been taken inter alia that these petitions cannot be entertained by this Court as it involves disputed questions of fact. The respondent College has come with the case that the petitioner tried to unfold the examination papers of Chemistry -V, which was scheduled to be held on 30.3.99. The College Management had to delay the examination of that day and the Management had to incur extra expenditure for the misconduct of the petitioner. It has been further submitted that because of the conduct of the petitioners, the College, which was supported by Professors from their own funds, has earned a bad reputation. It has also been submitted that the result of the 2nd year B.Sc. was put on the notice board on 7.5.99. A copy of this computerised result Exh. 'R1' has been placed on record, which clearly shows that the result of these two petitioners was withheld. In this computerised result dt.7.5.99, the name of the petitioner Thakor Sumit S. appears at Sr.No.296 and it is clearly mentioned against his name in the column of the result that his result was withheld. Similar is the case with the other petitioner Brahmabhatt Viral Arvindbhai, whose name appears at Sr.No.216 and against his name also in the column of result, it is clearly mentioned that the result has been withheld. It has been categorically stated by the respondent - College that when the petitioners came to the office of the Principal for declaration of the result, as aforesaid, they were shown the proceedings of the Committee against them and the 3rd student, who was involved in the case of the use of unfair means as above. It has also been pleaded that petitioner had admitted that he had also purchased the question papers and sold the papers to other students and all the three students had admitted that they had purchased the question papers and distributed amongst other students. It was for this reason that the result was withheld and the examination was cancelled subsequently and they have been declared to have failed. It has been further submitted that Vice Chancellor of Gujarat University had delegated the powers with regard to the annual examination for 2nd Year B.Sc. vide his order dt.13.1.98 to the affiliated Colleges, copy of this order has been placed on record as Exh. 'R2'. Accordingly, the affiliated Colleges were to take appropriate action for any mal practice, fraud,

misconduct and/or improper conduct in these examinations. It has also been stated that a Committee was constituted from amongst the teaching staff of the College. This Committee conducted a detailed inquiry wherein 2 out of 3 students referred in Annexure 'A' had appeared before the Committee and had admitted their mal practice and misconduct, but the petitioner had chosen not to appear before the Committee. During the course of arguments it has been clarified by Mr. Zaveri appearing for the respondent - College that the 3rd candidate, who chose not to appear before the Committee, was the petitioner Thakor Sumit.S. i.e. petitioner in Special Civil Application No.4150/99. This clarification had to be given because Mr. Kogje raised the argument that it has been pleaded by the College in both these petitions that 2 out of 3 students had appeared before the Committee and the petitioner chose not to appear and, therefore, who was that student who chose not to appear. The statement that the petitioner chose not to appear before the Committee is contested by both the petitioners and it has been submitted on behalf of both the petitioners that none of them had appeared before the committee. The controversy has also been raised that if 2 out of 3 candidates had appeared before the Committee, who was that one candidate who chose not to appear because the allegation of the College is that only one candidate chose not to appear. In fact, the petitioners have asserted that they were never called upon to appear before the Committee. It has also been pleaded on behalf of respondent college that the Principal of the College had inquired into the matter after the results were declared and the petitioners had admitted before the Principal that they were involved in the mal practice and misconduct. Not only that the petitioner and the relatives had contacted the College Management and requested that the result of the petitioners may be declared and a no objection Certificate may be given to them to take admission in some other college, but with a view to have a impact on the educational field, the Principal thought it fit to cancel the result of the petitioners. It has been stated that the petitioners had made false statement inasmuch as they were never declared successful in the result dt.7.5.99. On the contrary, the document Exh.'R1' shows that the result was withheld. It has also been submitted that no marksheet was issued to any of the petitioners.

5. The only ground on which the impugned order dt.4.6.9 has been sought to be challenged is that it is a case of breach of principles of natural justice and the order has been passed without affording a reasonable

opportunity to the petitioners and that no notice whatsoever had been given to the petitioners.

6. Apart from the fact that there are serious allegations against the petitioners of their involvement in the matter of leaking out the question papers, unfolding the same so as to enter into the marketing of said question papers amongst the students, the case of the petitioners appears to be unbelievable that the result had been declared on 7.5.99 and in that result, one of the petitioners, had been declared to have passed and one of the students have obtained the marksheet and since there was some mistake in the marksheet one of the petitioners returned the marksheet for rectification. Besides the fact that the petitioner has not given the name of any such officer, employee or teacher of the College to whom he had given the alleged marksheet, in which he had been declared to have passed, the learned counsel for the petitioner Mr. Kogje was asked as to whether he had any xerox copy of the marksheet, which was given to him and an answer has been given that the petitioner did not retain any xerox copy of the marksheet and he had handed over to unnamed officer, teacher or employe of the College such original marksheet without retaining a xerox copy thereof. In such matters, any student, who want to return the marksheet for any correction, would certainly retain a xerox copy of it and would also name the person to whom the original marksheet was returned for any correction or rectification. Even otherwise, the document dt.7.5.99, which is a computerised result sheet, shows that the result of the petitioners had been withheld. It appears that the petitioners have coined and concocted a case. The petitions suffer from the vice of false averments. It also suffer from the vice of misstatement, concealment and suppression of material facts and it could not be said that the petitioners have approached this Court with clean hands in the equitable jurisdiction. No petitioner, who approaches the Court under Article 226 of the Constitution, can be allowed to touch the pure fountain of justice with his soiled and tainted hands. These petitions, as a matter of fact are required to be dismissed on this ground alone. Even if it is taken that the submissions made by the petitioners are not false, it is clear from the pleadings of both the sides that there are serious disputed questions of facts. The petitioners say that no notice was given, no inquiry was held; whereas the respondent - College states that they had appeared before the Committee and had admitted the guilt. Even with regard to the result there is a dispute and the petitioners have gone to the extent of stating that the

computerised result sheet, which had been produced by the respondent - College, is a fabricated document. In such a situation, when there are seriously disputed questions of fact involving complicated and intricate questions of facts, which are seriously disputed, the exercise with regard to deciding such dispute cannot be taken in the exercise of the writ jurisdiction under Article 226 of the Constitution of India. Even otherwise, I find that the tendency with regard to the leaking of the question papers and the selling and distribution of such question papers is on a steep increase and the authorities, who have to conduct the examination, are justified in taking such stern action in this type of cases when there are allegations of serious nature. In such matters, when the allegations prima face do not appear to be without substance, the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked by the petitioners, who at the very threshold of their student career are said to be involved in this type of allegations of leaking out the question papers and marketing the same.

7. On behalf of the petitioners, the case of Sachin Agarwal v. State of U.P., reported in AIR 1999 Allahabad 157 has been cited in which the order cancelling the result of the petitioner was held to be liable to be cancelled as it was not established beyond reasonable doubt that he had adopted unfair means. A case decided by this Court i.e. Patel Jagrutiben Kalabhai v. Gujarat Secondary Education Board, reported in {1950-91 (4) AIEC (All India Educational Cases) 166} has been cited. It was a case in which the Court held that the decision of the Board was based on merely suspicion, surmises and conjectures which cannot be sustained. In none of these two cases, there was an allegation that the guilt had been admitted. Yet another case relied upon by the petitioners is 1982 (1) GLR 233 (S.M.Sharma v. South Gujarat University). This was a case in which the Court considered the case of 'no evidence' and what is the meaning to be given to a case of 'no evidence' has been expounded. None of these three cases, even touch the fringes of the controversy involved in the present cases and, therefore, not at all relevant so far as the facts of the present case are concerned, more particularly when it is found that the petitioners had not come with clean hands and the petitions involve serious disputed questions of facts.

8. This Court does not find any substance in these petitions so as to interfere with the orders passed by the respondents. Both these petitions are hereby

dismissed. Rule in Special Civil Application No.4150/99 is hereby discharged and the notice in Special Civil Application No.4478/99 is also discharged. No order as to costs.